

The influence of the antiterrorist act onto the Poland's security and citizens' rights

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Abstract

The increasing threat of terrorist attacks in Poland forces the government to undertake proper preventive activities in advance. The authorities have decided, within their competences, upon the implementation a new act into the Polish legal system aiming at strengthening the competence of the Internal Security Agency (ABW) and assuring proper coordinating mechanisms between the ABW and remaining services, including those special ones in order to undertake common actions connected with recognizing, preventing and eliminating potential perpetrators of terrorist attacks. There are also elements concerning assuring proper mechanisms of reaction and undertaking activities in case of occurring such events. In order to complete at least a partial analysis of the undertaken matter, the notions concerning terrorism, the competences of the ABW, the special services and other services cooperating with the ABW should be defined.

Keywords: *Security, terrorism, the Internal Security Agency (ABW), special services, cooperation, coordination.*

The threat of terrorism is the most important justification of the antiterrorist act. Terrorism makes one of the biggest challenges in the context of assuring security both for the global, local or national perspectives. Being an international threat it goes beyond the frames of traditionally comprehended conflicts and critical situations. The growth of a terrorist threat level recently observed particularly in the countries from Western Europe, e.g. the attacks in France and Belgium, results in undertaking attempts aiming at amending regulations by particular countries and international organizations of other groups whose member is Poland, in

order to strengthen recognizing opportunities, preventing and fighting potential threats of terrorist character. The further part of the justification includes the lack of terrorist attacks in Poland until now however it does not mean that such attack may not occur in future. Additionally, it should be mentioned here about the involvement of the Polish Army in the combat against Islamic which significantly increases the level of occurring terrorist attacks. The changeability of the methods used by terrorists makes Poland to possess proper instruments serving to appropriate recognizing and revealing threats and effective preventing potential events.

In case of a terrorist attack, Poland must be prepared to undertake immediate and adequate measures of coordinated reaction of proper services, including neutralization of event effects. Reaching those aims demands providing cooperative mechanisms of all services, bodies and institutions engaged in widely comprehended antiterrorist actions as well as local authorities, private sector and the whole society.

The justification to the act indicated the most important aim – the increase of security of all Polish citizens that may be reached by:

- Strengthening mechanisms of activities coordination;
- Précising tasks of particular services and bodies as well as regulations of their cooperation;
- Providing opportunity to effective actions in case of suspecting crime of a terrorist type including those within preparatory proceedings;
- Providing reaction mechanisms adequate to the kind of occurring threats;
- Adjusting penal regulations to the new types of threats of a terrorist kind.

Nowadays, binding regulations in that matter is not cohesive and thus they do not guarantee an effective activity or preventing from terrorist cases.

The legislator indicates that the act is of integrating character for the entities of the Polish antiterrorist system with clear indication of responsibility in particular areas.

The use of a system attitude in the act to the matter of threats of a terrorist kind shall allow using the potential of all services, bodies and institutions possessing legislative competences to perform antiterrorist actions.

Regardless the undoubted benefits from the act on antiterrorist actions and the amendment of other acts there are opposite voices particularly within the limit of citizens' freedoms. That issue shall be touched in the further part of the article.

Terrorism

It derives from the Greek *τρέω/treo* (to thrill, be scared, escape, be coward) and the Latin *terror, -oris* (fear, scare or a horrible news) and the Latin verb *terreo* (to cause terror, scare).

Whereas the Oxford English dictionary explains the term as extreme fear, the use of such fear to intimidate people, especially for political reason. The Terror also explains and means the period of the Jacobins ruling in the times of the Great French Revolution; whereas terrorism means the use of violence and intimidation in the pursuit of political aim. In all European languages, the word terrorism sounds phonetically almost the same: French *terrorisme*, English *terrorism*, Russian *terrorizm*, Spanish *terrorismo*, thus it is understood for everybody. Language specialists also found the relation to the Latin and sanscrit. There are over 200 definitions of terrorism in the subject literature. The lack of one universal and commonly accepted definition of terrorism is a serious difficulty of a legal character of international institutional cooperation within combating terrorism and imprisoning a transferring captured organizers and perpetrators of terrorist attacks. Terrorism is similar to a national freedom fight recognized as a legal form of performing the law of nations to sovereignty by the national law. Without a binding definition of terrorism, it is impossible to unanimously determine actions to be regarded illegal and combat them and which of them are an acceptable form of a political fight.

The reasons of not accepting a common definition of terrorism in the international law are:

- Free interpretation of the term terrorism dependent on their interests by the states;
- Discrepancies of attitudes of developing and developed countries towards the evaluation of activities of groups using terrorist methods in the national freedom fight;
- Discrepancies of states in the evaluation of the level of threat against the phenomenon for own security;

- Performing a policy to undertake more determined actions by a state towards terrorism only after spectacular acts of terror (the last outrage policy).

The problems with determining what is and what not terrorism is result mostly from strong relations of the phenomenon with politics. They are still present and unsolved questions as follow: Is an armed attacking politics, army or the police called terrorism? Can terrorism be justified in any situations? Can terrorism be used by a state? The opinions expressed in that matters always depend on moral beliefs and political attitudes of citizens usually created by media.

The analysis of scientific heritage within the phenomena of terrorism allows claiming that terrorism is:

- Politically inseparable as regards aims and motivations;
- Planned in order to follow long-term psychological repercussions extending a direct victim or target;
- Used by organizations of a clear leader hierarchy to be identified or of a conspiracy structure of units whose members do not wear uniforms or identification bands.
- Performed by a sub-national group of non-state creature;
- Uses violence or threats its use which is equally important.

The first use of the word terrorism occurred during the third Conference of the International Peal Law Association in Brussels in 1930 when a text referring to the terrorism issues consisting of five articles was adopted. In order to present the multiplicity and variety of used notions in defining the phenomenon of terrorism it is obvious to refer to several definitions used in selected countries and international organizations.

In Great Britain the definition is mainly used for legislative purposes. It differs terrorist attacks and criminal crimes. According to it “terrorism is a use of various forms of violence to reach political aims and to threaten a society”.

According to the Federal Bureau of Investigation, “terrorism may be defined as illegal use of force and violence aiming at threatening persons or making pressure on government, civilians as well as other segments of a state system in order to support political and social purposes”.

The US Department of Defense terrorism is considered as “illegal use or threat to use force or violence towards a person or property in order to force or threat governments or societies often to reach political, religious or ideological purposes”. Another definition is in the NATO structures where terrorism is considered to be illegal use of violence or power against a unit or property aiming at forcing or threatening a society or government and reaching intended political purposes.

There are also numerous definitions of terrorism in the Polish science. According to the Academy of the National Defense, terrorism means: “a form of violence, i.e. purposed action of forcing or threatening governments or particular social groups for political, economic or other purposes”.

Whereas, the PWN Encyclopedia defines terrorism as “small extremist groups’ activity which attempt to draw public opinion to their slogans or force state governments where certain services are performed for their benefits (e.g. releasing imprisoned terrorists, ransom) by murders, threat of murders, assassinations, capturing hostages, hijacking and other measures condemned by an international society”.

Marian Fleming determined terrorism as “purposed actions infringing penal law and aiming at threatening public bodies or significant social groups and to force to certain proceedings by acts of violence or threatening to such acts”.

The research of numerous scientific centers indicate that the development of the phenomenon of terrorism forces all states to create modern and complex legal regulations allowing effective combat against terrorists’ activity. One of the key elements is to adopt a professional definition of terrorism.

Taking into account the above definitions concerning terrorism it should be unanimously claimed that it is a very wide issue from a scientific and social side but as regards security it makes the biggest threat for a state functioning and the life and health of citizens.

The tasks connected with combating terrorism have been implemented to the Internal Security Agency and the Agency of Intelligence.

The Internal Security Agency (ABW)

Was established by the act from May 24th, 2002 on the Internal Security Agency and the Agency of Intelligence. On that basis two intelligence and counterespionage functions of the Government Protection Bureau were

separated. The ABW has taken over the duties of the former Government Protection Office concerning providing stable internal situation of Poland. Combating corruption of those performing public functions have been included into their tasks. Moreover, since 2004, i.e. the time of joining the EU, the ABW has been dealing with combating irregularities in the EU's funds absorption. The ABW is a special service appointed to the protection of the Polish Constitution order. The range of tasks focuses on the internal security of the state and citizens. A principal task of the ABW is protection of the state from planned and organized actions that may create threat for independence or constitutional order of Poland, disturb functioning public structures or expose to injury basic interests of the state. The ABW duties include: recognition, prevention and combating threats aimed at the state internal security and its constitutional order, particularly sovereignty and international position, independence and untouchability of its territory as well as a state defense, recognition, prevention and revealing crimes: spying, terrorism, illegal revealing or using secret information and other crimes aiming at the state security, economic basis of the state, corruption of those performing public functions if it may aim at the state security, the range of production and turnover of goods, technologies and services of a strategic significance for the state security, illegal manufacturing, possessing and turnover of weapon, ammunition and explosives, weapons of mass destruction, drugs and psychotropic substances in the international turnover and chasing its perpetrators, performing, within own properties, tasks connected with secret information protection and performing the national function of government security within secret information protection in the international relations, obtaining, analyzing, transforming and transferring information to proper bodies that may have a significant meaning for the internal security protection of the state and its constitutional order, undertaking other actions determined in separate acts and international agreements.

The ABW activity beyond the Polish borders may be performed due to its activity in the Polish territory only within the realization of tasks determined in par. 1 p. 2. The Head of the Internal Security Agency performs the tasks of a meeting point to exchange data mentioned in art. 16 par. 3 of the decision of the Council 2008/615/WSiSW concerning intensifying trans-border cooperation, particularly in combating terrorism and trans border

crime (Journal of Laws UE L 210 from 06.08.2008, p. 1). The ABW performs its duties by obtaining, analyzing and transforming information concerning dangers. Ready analyses are transferred to proper constitutional bodies. While performing the tasks, the Agency uses the operational and process entitlements. The ABW conducts preventive aiming at providing security particularly to fragile spheres of the state and economy functioning. Widely comprehended prevention consists of the systems of opinions and certifications as well as training programs. The ABW conducts controlling proceedings towards the persons and entities that wish to acquire access to the secret information due to the area they refer to. The ABW task is to provide access to such information only to those persons who guarantee keeping it secret. The Agency trains to protection proxies as well as it performs a system of trainings within so called counterespionage prevention directed to those working in significant institutions from the Polish interest point of view. The Agency is entitled to monitor the import of goods and technologies of double use. The Head of the ABW participates in the system of opinions of trade transactions of the goods of a strategic significance that are concluded by the Polish companies or those occurring in the Polish territory. The ABW also controls foreigners who apply for the Polish citizenship, the status of a refugee, granting political asylum or domiciliation permission. Moreover, it performs projects devoted to the protection of critical infrastructure particularly concerning the Polish cyberspace.

The act on antiterrorist actions and the change of some other acts

The antiterrorist act defines numerous significant notions and actions entitling coordination of actions in case of obtaining information on those suspected for preparing terrorist attacks. Additionally, the act precisely determines the duties of services and entities involved in the whole process of revealing, preventing and neutralization of the terrorist attacks effects. There are the most important notes presented as below.

The antiterrorist actions are those actions of the public administration bodies aiming at preventing the events of a terrorist kind, preparation to taking control over them by the planned endeavors, reacting in case of occurring such events and removing their effects including recreation of resources devoted to reacting to them;

The counterespionage actions are those actions towards perpetrators, those preparing or assisting in committing crime.

The public administration infrastructure is the systems and objects necessary to provide safe and continued functioning of public administration bodies.

The critical infrastructure are the systems and included objects functionally connected with each other including constructor objects, devices, installations, key services for the state security and its citizens and serving to providing proper functioning of public administration bodies as well as institutions and entrepreneurs. The critical infrastructure overwhelms the following systems:

- a) delivery of Energy, Energy raw materials and gas,
- b) communication,
- c) IT network,
- d) finances,
- e) delivery of food,
- f) delivery of water,
- g) health care,
- h) transport,
- i) rescue,
- j) providing continuity of public administration actions,
- k) production, storage, and using chemical and radioactive substances including gas pipes of dangerous substances.

The Minister Special Services Coordination is a Minister – a Member of the Council of Ministers whose range of actions overwhelms tasks connected with the activity of special services pursuant to the act from May 24th, 2002 concerning the Internal Security Agency and the Agency of Intelligence.

The place of occurrence of a terrorist kind is an open or closed space where an action of a terrorist kind occurred or where its result occurred or was supposed to occur and a space where threats connected with an action of a terrorist kind take place.

An action of a terrorist kind is a situation which is suspected to have aroused due to a crime of a terrorist kind i.e. a forbidden action penalized by imprisonment up to 5 years committed in order to:

- 1) serious threatening many people,
- 2) forcing a public authority body of Poland or other country or an international organization body to undertake or stop certain actions,
- 3) arouse serious disturbances in the system or economy of Poland or other country or an international organization as well as a threat or committing such an act or threat or occurring such an act.

Responsibility for preventing actions of a terrorist kind has been granted to the Head of the Internal Security Agency.

Responsibility for preparation of undertaking the control over actions of a terrorist kind due to planned endeavors, reacting in case of occurring such actions and recreation of resources devoted to reactions on those actions has been granted to the appropriate Minister of home affairs.

The Head of the ABW coordinates the analysis and information actions undertaken by the Internal Security Agency, the Agency of Intelligence, The Military Counterespionage Service, the Military Espionage Service and the Central Anticorruption Bureau as well as the exchange of information transferred by the Police, Border Guard, the Government Protection Bureau, the State Fire Brigade, the Customs service, the General Inspector of Financial Information, the General Inspector of Tax Control, the Military Police and the Governmental Security Centre concerning threats of a terrorist kind and data concerning persons mentioned in art. 6 par. 1 by their collection, transformation and analysis.

The Head of the ABW keeps a register preserving the requirements concerning the protection of secret information including the information on:

- 1) persons undertaking an activity for the benefit of terrorist organizations or organizations connected with terrorist activity or members of those organizations;
- 2) wanted persons conducting a terrorist activity or persons suspected for committing crimes of a terrorist kind toward whom there was an order to be arrested, searched in Poland or there has been a wanted curricular submitted as well as those wanted on the basis of the European order of arrest;
- 3) persons towards whom there is a justified suspicion that they may perform actions aiming at committing a crime of a terrorist kind including those being dangerous for the security of civil aviation;

- 1) persons participating in terrorist trainings or those travelling in order to commit a crime of a terrorist kind.

The Head of the ABW coordinates:

- 1) operational and recognizing action undertaken by the Internal Security Agency, the Agency of Intelligence, the Military Counterespionage Service, the Military Espionage Service, the Central Anticorruption Bureau, the Police, the Border Guard, the General Inspector of Tax Control and the military Police as well as
- 2) actions of observing and registering, via technology measures, an image of events in public places and sound accompanying to those events undertaken by customs officers.

In order to recognize, prevent or combat crimes of a terrorist kind, the Head of the ABW may order secret conducting proceedings towards a non-Polish citizen being a concern to be performing a terrorist activity for the period up to 3 months, namely:

- 1) acquiring and maintaining the content of conducted conversations via technology measures including IT network;
- 2) acquiring and maintaining image or sound of persons in interiors, means of transport or other place than public ones;
- 3) acquiring and maintaining the content of mailing including e-mailing;
- 4) acquiring and maintaining data included IT data players, final telecommunication devices, IT and tele-information systems;
- 5) acquiring the access and control over dispatch content.

The officers of the ABW, Police and Border Guard are entitled to collect fingerprints or record a face image of a non-citizen of Poland in case when:

- 1) there is a doubt concerning the person's identity or
- 2) there is a suspicion concerning illegal Polish border crossing or doubt as for the declared purpose of the stay in the Polish territory or
- 3) there is suspicion as for the intention of illegal stay in the Polish territory or
- 4) there is suspicion as for the relation of a person with an event of a terrorist kind or
- 5) a person might have participated in a terrorist training.

In order to accomplish the task mentioned in art. 3 par. 1, the Head of the ABW may acquire an access for free to:

- 1) data and information collected in public registers conducted particularly by:
 - a) the Internal Security Agency, the Intelligence Agency, the Military Counterespionage Service, the Military Espionage Service, the Central Bureau of Anticorruption, the Government Protection Office the Police, the Border Guard, the State Fire Brigade, the Customs Service, the General Inspectorate of Tax Control, the Military Police and the Governmental Security Centre,
 - b) ministers managing the governmental departments,
 - c) the Head of the Office of Foreigners' Affairs,
 - d) the Head of Electronic Communication Office,
 - e) the Head of Civil Aviation Office,
 - f) the Head of the State Atomic Agency,
 - g) Social Insurance Office (ZUS),
 - h) the Head of Agricultural Social Insurance Fund (KRUS),
 - i) the Commission of Financial Supervision,
 - j) the General State Surveyor,
 - k) self-governmental units– as well as organizational units and subject of supervised by them,
- 2) an image of events registered by picture recording devices placed in objects of public use, by public roads and other public places as well as receives for free a copy of the registered recording of the image.

Emergency levels

In case of occurring a threat of event of a terrorist kind or in case of occurring such an event there may be one of the four emergency levels implemented:

- 1) the first emergency level CRP (ALFA–CRP);
- 2) the second emergency level CRP (BRAVO–CRP);
- 3) the third emergency level CRP (CHARLIE–CRP);
- 4) the fourth emergency level CRP (DELTA–CRP).

Summary

The information presented above concerning the phenomenon of terrorism undoubtedly is one of the biggest threats for the security and sovereignty of Poland. Terrorist actions unanimously indicate the basis of the analysis of the contemporary acts that they directly focus on the society and critical infrastructure of the state. Thus, undertaking necessary preventive actions and ordering the competences of particular services and entities are government's obligation.

Undertaking effective actions requires using any available methods, measures and forms of action of all services in Poland. Those actions far involve a person's privacy but there is no other possibility in order to build a complete personality of a potential terrorist.

Information appearing in media on a society's permanent invigilation due to introducing the antiterrorist act is presented in a one-sided way and present fake image of the activity of the services due to the antiterrorist act. Coming the antiterrorist act into force shall bring more benefits for Poland and it will allow to:

1. Effective coordination of actions within recognition and collecting information concerning persons suspected of terrorism.
2. Proper functioning of actions connected with neutralization of terrorist attacks effects and providing effective coordination of services participating in undertaken actions.
3. Control of the actions conducted by services within the area of personal privacy protection.
4. Defining lacking notions connected with functioning of services, administration bodies and remaining entities.
5. Determining particular tasks and obligations of services and entities.
6. Determining responsibility for undertaken actions.
7. Increasing effectiveness within recognition, revealing and preventing from terrorist actions.
8. Collecting information on persons suspected of terrorism.
9. Establishing detailed principles of cooperation while exchanging and accessing information for the Head of Security Agency.
10. More effective using personal, devices and logistic resources within the conducted actions.

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